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PUBLIC UTILITY COMMISSION
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JOINT APPLICATION OF ONCOR
ELECTRIC DELIVERY COMPANY,
LLC AND AEP TEXAS, INC. TO
AMEND CERTIFICATES OF
CONVENIENCE AND NECESSITY
FOR A DOUBLE CIRCUIT 345-KV
TRANSMISSION LINE IN PECOS,
REEVES, AND WARD COUNTIES,
TEXAS (SAND LAKE – SOLSTICE
CCN)

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BEFORE THE STATE OFFICE

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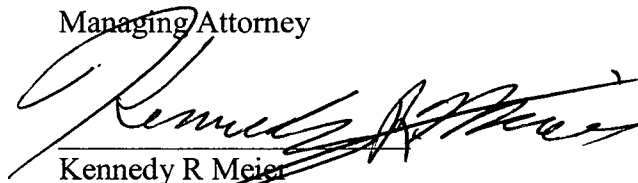
ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S INITIAL BRIEF

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DATE: MARCH 5, 2019

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**SOAH DOCKET NO. 473-19-1265
PUC DOCKET NO. 48785**

JOINT APPLICATION OF ONCOR ELECTRIC DELIVERY COMPANY, LLC AND AEP TEXAS, INC. TO AMEND CERTIFICATES OF CONVENIENCE AND NECESSITY FOR A DOUBLE CIRCUIT 345-KV TRANSMISSION LINE IN PECOS, REEVES, AND WARD COUNTIES, TEXAS (SAND LAKE – SOLSTICE CCN)	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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COMMISSION STAFF’S INITIAL BRIEF

I. INTRODUCTION

A. Introduction

Oncor Electric Delivery Company LLC (Oncor) and AEP Texas Inc. (AEP) (collectively, Applicants) filed an application (Application) to amend their certificates of convenience and necessity (CCN) for a proposed double-circuit 345-kV transmission line in Pecos, Reeves, and Ward Counties.¹ The project will connect the existing Oncor Sand Lake Switch in Ward County, Texas and the existing AEP Solstice Switch in Pecos County, Texas.² The project has been designated as the Sand Lake – Solstice 345 kV Transmission Line Project (Project).³

The Staff (Staff) of the Public Utility Commission of Texas (Commission) supports the routing of a new transmission line in Pecos, Reeves, and Ward Counties, Texas, along what was designated as Route 41 in the Application. As discussed below, Route 41 best meets the criteria

¹ Application, Oncor/AEP Ex. 1 at 3-5.

² *Id.* at 4.

³ *Id.* at 3.

in PURA⁴ § 37.056 and 16 Texas Administrative Code (TAC) § 25.101 when compared to all the proposed routes.⁵

B. Summary

Through the testimony and evidence presented at hearing, three routes emerged as the primary supported routes: two routes through the central corridor, including Staff's recommended route, Route 41, and Applicants' recommended route, Route 320,⁶ and one route through the western corridor, Route 325 Modified, supported by intervenors Occidental Permian Ltd., Oxy Delaware Basin, LLC, Oxy USA Inc., Oxy USA WTP LP, Houndstooth Resources, LLC, and Occidental West Texas Overthrust, Inc. (collectively, Oxy) and COG Operating LLC (Concho).⁷ For the central corridor routes, both Concho and Oxy would not oppose either Route 41 or Route 320, as long as certain proposed modifications to links C2, F3/G4/G51/I2, and J1/J7 are accepted.⁸ However, at this time, Oxy and Concho have not provided any signed landowner route modification consent agreements for their proposed modifications for any routes, though they have stated they are in the process of contacting landowners and obtaining the agreements.⁹ In addition to the proposed modifications from Oxy and Concho regarding the central corridor routes, intervenors Plains Marketing, L.P. and Plains Pipeline, L.P. (collectively Plains Pipeline) prefer Route 320 over routes that include links B1 and C3, such as Route 41.¹⁰

For the proposed western corridor route, Route 325 Modified, Oxy and Concho propose modifications to links C2, E1/F1, and K11.¹¹ As referenced above, Oxy and Concho have not yet

⁴ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–66.016 (PURA).

⁵ Direct Testimony of David Bautista, PUC Staff (Staff) Ex. 2 at 11:6-7, 18:6-9.

⁶ Direct Testimony of Brenda J. Perkins, Oncor/AEP Ex. 7 at 8.

⁷ Cross-Rebuttal Testimony of Albert Mendoza, Oxy Ex. 3 at 2-4; Rebuttal Testimony of Brent Lowery, COG Ex. 2 at 9.

⁸ Oxy Ex. 3 at 1-4; COG Ex. 2 at 9-12.

⁹ Oxy Ex. 3 at 5, COG Ex. 2 at 11-12.

¹⁰ Direct Testimony of Charles H. Midgley, Plains Pipeline Ex. 1 at 11.

¹¹ Direct Testimony of Albert Mendoza (Sand Lake to Solstice Portion), Oxy Ex. 2 at 17-22; Oxy Ex. 3 at 11; COG Ex. 2 at 8-9.

provided signed landowner route modification consent agreements for their proposed modifications, though they have advised they are working on obtaining them.¹²

Based on the route alternatives currently available, Route 41 best balances the desire to select a route exhibiting reasonable quantitative criteria, while also exhibiting features consistent with the community values expressed by parties and residents. A total of 29 alternative routes were proposed by Applicants and were included in the notice of the application.¹³ As affirmed by the testimony of Staff witness David Bautista, all proposed alternative routes are viable.¹⁴

PURA and the Commission's substantive rules list the requirements for approving an application for a CCN and for approving a route for a proposed transmission line. "To approve an application to obtain or amend a CCN, the [Commission] must find that the proposed CCN is necessary for the service, accommodation, convenience, or safety of the public."¹⁵ "The plain language of the rule grants the [Commission] authority to consider and weigh a variety of factors—engineering constraints, costs, grid reliability, and security, along with the criteria in PURA section 37.056—in addition to use of existing rights-of-way in determining the most reasonable route for a transmission line."¹⁶ In being given authority to consider and weigh the various routing factors, "the [Commission] may in some cases be required to adjust or accommodate the competing policies and interests involved."¹⁷ "[N]o one factor controls or is dispositive."¹⁸

¹² Oxy Ex. 3 at 5, COG Ex. 2 at 11-12.

¹³ Oncor/AEP Ex. 1, Attachment 12.

¹⁴ Staff Ex. 2 at 33:19-23.

¹⁵ *Dunn v. Pub. Util. Comm'n of Tex.*, 246 S.W.3d 788, 791 (Tex. App.—Austin 2008, no pet.).

¹⁶ *Id.* at 795.

¹⁷ *Pub. Util. Comm'n of Tex. v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex. App.—Austin 1985, writ ref'd n.r.e.).

¹⁸ *Dunn*, 246 S.W.3d at 795.

1. Route 41 exhibits positive quantitative features.

Route 41 exhibits positive quantitative features. While these quantitative features will be discussed in greater detail in Section III below, the main quantitative criteria that most favor Route 41 are the following:

- Route 41 has only three habitable structures within 500 feet of the centerline. This is the second lowest number of habitable structures of the proposed alternative routes.¹⁹ This compares more favorably as opposed to the company's proposed route, Route 320, which has 38 habitable structures within the same distance.²⁰
- Route 41 is the third shortest route of the proposed alternative routes.²¹
- Route 41 is the second least costly of the proposed alternative routes.²²
- Route 41 parallels property lines, existing transmission line right-of-way, or compatible right-of-way for 26.4% of its total length.²³ Routes with greater paralleling are longer and cost more, or have more habitable structures.²⁴
- Texas Parks and Wildlife Department (TPWD) did not express any specific concerns about Route 41.²⁵ TPWD's preferred route, Route 324, is similar to Route 41, but is longer, costlier, and has 2 electronic installations within 2,000 feet of the centerline.²⁶

2. Route 41 exhibits positive qualitative features.

Route 41 best conforms with "community values"—a broadly construed term that "is properly interpreted as a shared appreciation of an area or other natural or human resource by

¹⁹ Staff Ex. 2 at 32:2-3.

²⁰ *Id.* at 26:2-3.

²¹ *Id.* at 26:3-4.

²² *Id.* at 25:6-7. The phrase *alternative routes* refers to the 29 routes presented in the Application.

²³ *Id.* at 33:9-12.

²⁴ *Id.* at 30:4-6.

²⁵ *Id.* at 24:1-2.

²⁶ *Id.* at 25 and 28; Oncor/AEP Ex. 1 at 24.

members of a national, regional, or local community.”²⁷ “[C]ommunity values may include landowner concerns and opposition.”²⁸

Staff’s expert witness, David Bautista, analyzed the statements filed in this proceeding, and the responses received by Applicants from the public participation process in order to evaluate community values.²⁹

Consideration of these factors supports the selection of Route 41. Staff will further discuss these and other criteria in Section III (Evaluation of Proposed Routes) below and will respond to the specific questions set out in the Commission’s Preliminary Order³⁰ in Section IV (Issues to be Addressed in the Commission’s Preliminary Order).

II. JURISDICTION AND NOTICE

The Commission has jurisdiction over this matter under PURA §§ 32.001, 37.053, 37.056, and 37.057, and 16 TAC § 25.101. The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding under Tex. Gov’t Code § 2003.049 and PURA § 14.053.

Applicants provided proper notice of the application in compliance with PURA § 37.054 and 16 TAC § 22.52(a). In SOAH Order No. 2, the Administrative Law Judges (ALJs) found notice to be sufficient.³¹ In SOAH Order No. 4, the ALJs found Applicants’ supplemental notice to be sufficient.³² No party recommended finding the application or notice deficient. Oncor and

²⁷ *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity (CCN) for a 138-kV Transmission Line in Kerr County*, Docket No. 33844, Finding of Fact No. 65 (Mar. 4, 2008).

²⁸ *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Gillespie to Newton 345-kV CREZ Transmission Line in Gillespie, Llano, San Saba, Burnet, and Lampasas Counties, Texas*, Docket No. 37448, Proposal for Decision at 14 (Mar. 18, 2010).

²⁹ Staff Ex. 2 at 19:9-20:12.

³⁰ Order of Referral and Preliminary Order (Nov. 14, 2018) (Preliminary Order).

³¹ SOAH Order No. 2 (Dec. 10, 2018).

³² SOAH Order No. 4 (Jan. 24, 2019).

AEP also addressed this issue in their Joint Brief on Uncontested Issues³³ (Joint Brief), and Staff joins the Joint Brief as to this issue.

III. EVALUATION OF PROPOSED ROUTES

A. Routing Criteria under PURA § 37.056(c)(4)

The Commission may grant a CCN only if it finds that it is necessary for the service, accommodation, convenience or safety of the public.³⁴ PURA § 37.056 provides routing criteria to be considered in an electric CCN proceeding; these criteria are analyzed in turn below.³⁵

1. Community Values

Staff's analysis of community values supports selection of Route 41. In order to facilitate community involvement, Applicants held a public participation meeting on August 15, 2018.³⁶ Applicants incorporated the public input from this meeting into the selection of the 29 alternative routes.³⁷

2. Transmitters and Airports.

As the table below demonstrates, modified Route 325 is the only route of the most commonly supported routes that has an electrical installation within 2,000 feet of the centerline and is the only route that has an airport with a runway shorter than 3,200 feet long within 20,000

³³ Oncor Electric Delivery Company LLC's and AEP Texas Inc.'s Joint Brief on Uncontested Issues Regarding the Sand Lake – Solstice Project at 5-6 (Feb. 12, 2019). (Joint Brief).

³⁴ PURA § 37.056(a).

³⁵ PURA § 37.056(c).

³⁶ Oncor/AEP Ex. 1, Attachment 1 at 5-1.

³⁷ *Id.*, Attachment 1 at 6-1.

feet of the centerline.³⁸ Route 41 does not have a transmitter or airport within any of the measured distances provided by Applicants.

	<u>Route 41</u>	<u>Route 41 modified</u>	<u>Route 320</u>	<u>Route 320 modified</u>	<u>Route 325 modified</u>
AM commercial radio transmitters within 10,000 ft. of centerline	0	0	0	0	0
FM radio transmitters, microwave towers, or other electrical installations within 2,000 ft. of centerline	0	0	0	0	1
Airports with a runway ≤ 3,200 ft. within 10,000 ft. of centerline	0	0	0	0	0
Airports with a runway > 3,200 ft. within 20,000 ft. of centerline	0	0	0	0	1
Heliports within 5,000 ft. of centerline	0	0	0	0	0
Private airstrips	0	0	0	0	0

3. Park and Recreational Areas

There are no designated parks or recreational areas located within the study area.³⁹

³⁸ Oncor/AEP Ex. 1 at 24-26; Rebuttal Testimony of Russell J. Marusak, Oncor/AEP Ex. 11 at Exhibit RJM-R-7.

³⁹ Staff Ex. 2 at 21:6-8.

4. Historical Values

Route 41 does not cross any recorded archaeological sites and has no cemeteries within 1,000 feet of the route centerline.⁴⁰ Route 41 also has the shortest length of route across areas of high archaeological/historical site potential compared to the other most commonly supported routes and does not cross any cultural resource sites.⁴¹ The table below summarizes the cultural resources data for the most commonly supported routes.⁴² Further, Staff recommends the use of the Commission's frequently adopted ordering language to mitigate any potential impacts.⁴³

	<u>Route 41</u>	<u>Route 41 modified</u>	<u>Route 320</u>	<u>Route 320 modified</u>	<u>Route 325 modified</u>
Recorded cultural resource sites crossed	0	0	0	0	1
Additional cultural resources within 1,000 ft. of ROW centerline	3	2	1	0	1
Length of route through across areas of high archaeological and historical site potential (feet)	62,797	64,852	63,063	65,118	70,258

⁴⁰ *Id.* at 21:14-15.

⁴¹ Oncor/AEP Ex. 1, Attachment 1, Appendix E; Oncor/AEP Ex. 11 at Exhibit RJM-R-7.

⁴² *Id.*

⁴³ Staff Ex. 2 at 21:15-18 ("If any further archeological or cultural resources are found during construction of the proposed transmission line, Oncor and AEP should immediately cease work in the vicinity of the archeological or cultural resources, and should immediately notify the Texas Historical Commission."); *see also Application of Rayburn Country Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Transmission Line in Hunt County*, Docket No. 46929, Ordering Paragraph No. 4 (Mar. 8, 2018) (adopting similar ordering language).

5. Aesthetic Values

The negative impact on aesthetic values from constructing Route 41 is comparable to the negative impact from constructing other alternative routes.⁴⁴ Most of the study area is rural in nature, with undeveloped land used primarily for oil and gas production; livestock grazing; and/or irrigated crop production.⁴⁵ There is some commercial, residential, and industrial development concentrated near the cities of Barstow and Pecos, US 285, and the state highways in the area.⁴⁶ However, as summarized in the table below, Route 41 is tied with Route 320 for the shortest estimated length of right-of-way within the foreground visual zone of U.S. and state highways.⁴⁷

	<u>Route 41</u>	<u>Route 41 modified</u>	<u>Route 320</u>	<u>Route 320 modified</u>	<u>Route 325 modified</u>
Estimated length of ROW within foreground visual zone of U.S. and State Highways (feet)	20,298	23,895	20,298	23,895	33,807

6. Environmental Integrity

TPWD recommended Route 324 as the best alternative route for preservation of environmental integrity of the area.⁴⁸ After reviewing the information provided by Applicants and TPWD, Staff recommends Route 41 as it is the shortest route that still offers minimal environmental impact to the region.⁴⁹ TPWD also did not express specific concerns against

⁴⁴ Staff Ex. 2 at 22:6-8.

⁴⁵ Oncor/AEP Ex. 1 at 3-70.

⁴⁶ *Id.*

⁴⁷ Oncor/AEP Ex. 1, Attachment 1, Appendix E; Oncor/AEP Ex. 11 at Exhibit RJM-R-7.

⁴⁸ See Staff Ex. 2, Attachment DB-2.

⁴⁹ *Id.* at 24:2-3.

Route 41 as a routing option.⁵⁰ The table below summarizes the route lengths for the commonly supported routes.⁵¹

	<u>Route 41</u>	<u>Route 41 modified</u>	<u>Route 320</u>	<u>Route 320 modified</u>	<u>Route 325 modified</u>
Length of Route (miles)	45.7	47.5	44.5	46.3	54

As an issue affecting environmental integrity, transmission line route lengths can play a role in environmental impacts, even if the construction of any one line is not anticipated to have significant adverse impacts on its own.⁵² Indeed, route length can affect all of the factors discussed above, and those further detailed below. Route 41 is the second shortest of the commonly supported routes, and only includes 3 habitable structures within 500 feet of the centerline, as opposed to Route 320 with 38 habitable structures within 500 feet of the centerline.⁵³ The difference in length between Route 41 and Route 320 is only 1.2 miles.⁵⁴

B. Routing Criteria under 16 TAC § 25.101(b)(3)(B)

The relevant rule presents additional criteria to be considered in an electric CCN, discussed below.⁵⁵

⁵⁰ *Id.* at 24:1-2.

⁵¹ Oncor/AEP Ex. 1, Attachment 1, Appendix E; Oncor/AEP Ex. 11 at Exhibit RJM-R-7.

⁵² *See* Staff Ex. 2 at 23-24.

⁵³ *See* Oncor/AEP Ex. 7 at Exhibit BJP-5; Oncor/AEP Ex. 11 at Exhibit RJM-R-7.

⁵⁴ *See* Oncor/AEP Ex. 7 at Exhibit BJP-5.

⁵⁵ 16 TAC § 25.101.

1. Engineering Constraints

Mr. Bautista testified that engineering constraints may exist, but that these possible constraints can be adequately addressed by using design and construction practices and techniques usual and customary in the electric utility industry.⁵⁶

2. Cost

Oncor and AEP addressed this issue in their Joint Brief and Staff joins the Joint Brief as to this issue.⁵⁷ Staff also notes that the cost of the alternative routes, including the necessary substation work, ranges from approximately \$125,931,000 to \$154,614,000.⁵⁸ At an approximate cost of \$127,529,000, Route 41 is the second least expensive alternative route, is less expensive than Routes 41 modified and 325 modified, is only \$1,598,000 more expensive than Route 320, and is only \$92,000 more expensive than Route 320 modified.⁵⁹ The variation in cost is driven primarily by variations in the lengths of the routes,⁶⁰ as discussed above. The table below summarizes the costs of the various commonly supported routes:

	<u>Route 41</u>	<u>Route 41 modified</u>	<u>Route 320</u>	<u>Route 320 modified</u>	<u>Route 325 modified</u>
Cost (in millions)	\$127.5	\$129.0	\$125.9	\$127.4	\$144.9
Percentage increase/(decrease) in cost compared to Route 41	0%	1.2%	(1.3)%	(0.1)%	13.6%

⁵⁶ Staff Ex. 2 at 24:16-19.

⁵⁷ Joint Brief at 7-12.

⁵⁸ See Oncor/AEP Ex. 1, Attachment 3. The phrase *alternative routes* refers to the 29 routes presented in the Application.

⁵⁹ See *id.*; Rebuttal Testimony of Wilson P. Peppard, Oncor/AEP Ex. 12 at 12. The phrase *alternative route* refers to the 29 routes presented in the Application.

⁶⁰ See Direct Testimony of Wilson P. Peppard, Oncor/AEP Ex. 6 at 8.

The above costs are only for the construction of the project, and do not include potential future costs for routine and emergency maintenance.⁶¹

3. Moderation of Impact on Affected Community and Landowners

On average, the most important concerns indicated by the only participant in the public meeting to complete a questionnaire were “minimizing length across residential areas,” “maximizing the distance from residences, historical and/or archaeological sites, and road frontages,” and paralleling existing transmission lines while “avoiding roadways and property boundaries.”⁶²

Route 41 best accommodates these interests, as addressed above in Section III.A. Specifically, Route 41 is the third shortest route overall, the second shortest route of the commonly supported routes, and only 1.2 miles longer than Route 320, and therefore helps minimize the overall length of the line.⁶³ In addition, there are only three habitable structures within 500 feet of the centerline of Route 41, which helps minimize the impact on residential areas and maximize the distance from residences.⁶⁴ Most of the other commonly supported routes have 37 or 38 habitable structures within 500 feet of the centerline, as shown in the table below.⁶⁵ As detailed in the table below, Route 41 compares favorably to the other commonly supported routes in minimizing the overall impact to historical and archaeological sites and roadways.⁶⁶ Specifically, Route 41 is tied for the fewest cultural resource site crossings, has the shortest distance that passes through areas with high potential for historical or archaeological sites, has no more highway crossings than any other commonly supported route, has a similar number of other road crossings as the other commonly supported routes, and is tied for the shortest amount of right-of-way within the visual

⁶¹ See Oncor/AEP Ex. 6 at 7.

⁶² See Oncor/AEP Ex. 1, Attachment 1 at 5-1.

⁶³ See Oncor/AEP Ex. 7 at Exhibit BJP-5; Oncor/AEP Ex. 11 at Exhibit RJM-R-7.

⁶⁴ Oncor/AEP Ex. 7 at Exhibit BJP-5.

⁶⁵ Oncor/AEP Ex. 7 at Exhibit BJP-5; Oncor/AEP Ex. 11 at Exhibit RJM-R-7.

⁶⁶ *Id.*

foreground of U.S. and state highways.⁶⁷ Paralleling of existing transmission lines will be addressed in the next section.

	<u>Route 41</u>	<u>Route 41 modified</u>	<u>Route 320</u>	<u>Route 320 modified</u>	<u>Route 325 modified</u>
Habitable Structures within 500 feet of route centerline	3	3	38	38	37
Recorded cultural resource sites crossed by route	0	0	0	0	1
Recorded cultural resources within 1,000 feet of route centerline	3	2	1	0	1
Length of route across areas of high historical or archaeological site potential	62,797	64,852	63,063	65,118	70,258
Number of highway crossings by route	3	3	3	3	3
Number of Farm to Market, county roads, or other street crossings by route	13	12	13	12	9
Estimated length of right-of-way within visual foreground of U.S. and state highways	20,298	23,895	20,298	23,895	33,807

None of the commonly supported routes impacts parks or recreational areas.⁶⁸ Moreover, Staff recommends the addition of language in the ordering paragraphs requiring the utility to work with affected landowners in order to minimize any impacts, similar to ordering paragraphs that have been adopted in the past.⁶⁹

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See *Application of Electric Transmission Texas, LLC to Amend Certificates of Convenience and Necessity for the Stewart Road 345-kV Transmission Line in Hidalgo County*, Docket No. 47973, Ordering Paragraph No. 11 (Feb. 13, 2019) (adopting similar ordering language).

4. Use of Compatible Rights-of-Way, Paralleling Existing Rights-of-Way

The tables below evaluate how much the commonly supported routes parallel existing compatible rights-of-way and how much they parallel existing transmission rights-of-way:⁷⁰

<u>Route</u>	<u>Length of route (Miles)</u>	<u>Length Parallel to existing Right-of-Way (Miles)</u>	<u>Percentage of length of route</u>
320 modified	46.3	20.1	43.4%
325 modified	54	23.2	43.0%
41 modified	47.5	20.1	42.3%
320	44.5	12.1	27.2%
41	45.7	12.1	26.5%

<u>Route</u>	<u>Length of route (Miles)</u>	<u>Length Parallel to existing Transmission Right-of-Way (Miles)</u>	<u>Percentage of length of route</u>
325 modified	54	7.2	13.3%
320	44.5	1.9	4.3%
41	45.7	1.9	4.2%
320 modified	46.3	0	0%
41 modified	47.5	0	0%

Route 41 parallels less existing right-of-way than most of the other commonly supported routes. However, as detailed above in sections III.B.2 and III.B.3, Route 41 is also one of the shortest and least-expensive routes of the commonly supported routes. As detailed in the next section, Route 41 is tied for impacting the fewest number of habitable structures of the commonly supported routes.

⁷⁰ See Oncor/AEP Ex. 7 at Exhibit BJP-5; Oncor/AEP Ex. 11 at Exhibit RJM-R-7; Staff Ex. 2 at 28-30.

5. Prudent Avoidance

The Commission's rules define prudent avoidance as "[t]he limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort."⁷¹ Limiting exposure to electric and magnetic fields can be accomplished by choosing a route that has fewer habitable structures in close proximity to the route.

The table below summarizes the number of habitable structures that are located within 500 feet of the centerline of the commonly supported routes.⁷² As shown, Route 41 is tied for impacting the fewest number of habitable structures among the commonly supported routes, and impacts significantly fewer habitable structures than most of the commonly supported routes.⁷³

	<u>Route 41</u>	<u>Route 41 modified</u>	<u>Route 320</u>	<u>Route 320 modified</u>	<u>Route 325 modified</u>
Habitable Structures within 500 feet of route centerline	3	3	38	38	37

IV. ISSUES TO BE ADDRESSED IN THE COMMISSION'S PRELIMINARY ORDER

A. Application (Preliminary Order Issue No. 1)

Issue No. 1 of the Order of Referral and Preliminary Order asks in part:

Is Oncor Electric Delivery Company, LLC and AEP Texas, Inc.'s application to amend their respective CCNs adequate? Does the application contain an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation?⁷⁴

⁷¹ 16 TAC § 25.101(a)(6).

⁷² Oncor/AEP Ex. 7 at Exhibit BJP-5; Oncor/AEP Ex. 11 at Exhibit RJM-R-7.

⁷³ *Id.*

⁷⁴ Preliminary Order at 3.

Oncor and AEP addressed this issue in the Joint Brief.⁷⁵ Staff joins the Joint Brief as to this issue.

B. Need (Preliminary Order Issue Nos. 2-3)

Issue No. 2 of the Preliminary Order asks:

Are the proposed facilities necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056(a) taking into account the factors set out in PURA § 37.056(c)? In addition, a) How does the proposed facility support the reliability and adequacy of the interconnected transmission system? b) Does the proposed facility facilitate robust wholesale competition? c) What recommendation, if any, has an independent organization, as defined in PURA § 39.151, made regarding the proposed facility? d) Is the proposed facility needed to interconnect a new transmission service customer?⁷⁶

Further, Issue No. 3 of the Preliminary Order asks:

Is the transmission project the better option to meet this need when compared to employing distribution facilities? If Oncor Electric Delivery Company, LLC and AEP Texas, Inc. [are] not subject to the unbundling requirements of PURA § 39.051, is the project the better option to meet the need when compared to a combination of distributed generation and energy efficiency?⁷⁷

Oncor and AEP addressed these issues in the Joint Brief.⁷⁸ Staff joins the Joint Brief as to these issues.

C. Route (Preliminary Order Issue Nos. 4–6)

Issue No. 4 of the Preliminary Order asks:

Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B)?⁷⁹

⁷⁵ Joint Brief at 6.

⁷⁶ Preliminary Order at 3.

⁷⁷ *Id.* at 3-4.

⁷⁸ Joint Brief at 7-12.

⁷⁹ Preliminary Order at 5.

Consistent with the above discussion, Staff recommends approval of Route 41 after weighing the factors set forth in PURA § 37.056(c)(4) and 16 TAC § 25.101(b)(3)(B).⁸⁰ Route 41 best balances the factors referenced above and has numerous advantages over the other routes.⁸¹

Issue No. 5 of the Preliminary Order asks:

Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes?⁸²

Although some parties may assert that routes other than Route 41 would have a less negative impact on landowners, the evaluation of this criterion is subjective, and Staff recommends that Route 41 best balances the concerns regarding the impact on landowners with the other statutory criteria. Mr. Bautista further recommended that the Commission adopt the standard ordering language that would allow the utility to make deviations under certain conditions.⁸³

Issue No. 6 of the Preliminary Order asks:

If alternative routes or facility configurations are considered due to individual landowner preference: a) Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations? b) Have the accommodations to landowners diminished the electric efficiency of the line or reliability?⁸⁴

Staff is not aware of any landowner who has made or has committed to making financial contributions to offset any incremental cost associated with alternative routes or facility configurations.

D. Texas Parks and Wildlife Department (Preliminary Order Issue No. 7)

Issue No. 7 of the Preliminary Order asks:

⁸⁰ Staff Ex. 2 at 18:6-9.

⁸¹ *Id.* at 33:4-18.

⁸² Preliminary Order at 5.

⁸³ Staff Ex. 2 at 13:23-14:6.

⁸⁴ Preliminary Order at 5.

On or after September 1, 2009, did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application pursuant to Section 12.0011(b) of the Texas Parks and Wildlife Code? If so, please address the following issues: a) What modifications, if any, should be made to the proposed project as a result of any recommendations or comments? b) What conditions or limitations, if any, should be included in the final order in this docket as a result of any recommendations or comments? c) What other disposition, if any, should be made of any recommendations or comments? d) If any recommendation or comment should not be incorporated in this project or the final order, or should not be acted upon, or is otherwise inappropriate or incorrect in light of the specific facts and circumstances presented by this application or the law applicable to contested cases, please explain why that is the case.⁸⁵

Oncor and AEP addressed this issue in the Joint Brief. Staff does not join the Joint Brief as to this issue, but does not oppose it. Mr. Bautista also recommended several mitigation measures that he found sufficient to address most of TPWD's concerns.⁸⁶ These measures include the following proposed ordering paragraphs:⁸⁷

1. Oncor and AEP shall follow the procedures outlined in the following publications for protecting raptors: *Suggested Practices for Avian Protection on Power Lines, The State of the Art in 2006*, Avian Power Line Interaction Committee (APLIC, 2006), the *Avian Protection Plan Guidelines*, (APLIC, 2005), and *Reducing Avian Collisions with Power Lines: The State of the Art in 2012*, (APLIC, 2012). Oncor and AEP shall take precautions to avoid disturbing occupied nests and will take steps to minimize the impact of construction on migratory birds, particularly during nesting season.
2. Oncor and AEP shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the right-of-way and shall ensure that such herbicide use shall comply with rules and guidelines established in the *Federal Insecticide Fungicide and Rodenticide Act* and with the Texas Department of Agriculture regulations.
3. Oncor and AEP shall minimize the amount of flora and fauna disturbed during construction of the transmission line, except to the extent necessary

⁸⁵ *Id.* at 5-6.

⁸⁶ Staff Ex. 2 at 11:8-16, 12:13-13:13, 13:21-22, and 22:10-24:13 (listing measures that, in Mr. Bautista's opinion, "are sufficient to address the Texas Parks and Wildlife Department's mitigation recommendations" and concluding "Oncor and AEP have the resources and procedures in place in order to accommodate the mitigation recommendations by the Texas Parks and Wildlife Department").

⁸⁷ *Id.* at 12:13-13:13 and 13:21-22.

to establish appropriate right-of-way clearance for the transmission line. In addition, Oncor and AEP shall revegetate, using native species, and shall consider landowner preferences in doing so. Furthermore, to the maximum extent practicable, Oncor and AEP shall avoid adverse environmental impact to sensitive plant and animal species and their habitats, as identified by the Texas Parks and Wildlife Department and the U.S. Fish and Wildlife Service.

4. Oncor and AEP shall use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.

E. Other Issues (Preliminary Order Issue No. 8)

Issue No. 8 of the Preliminary Order asks:

Are the circumstances for this line such that the seven-year limit discussed in section III of this order should be changed?⁸⁸

Oncor and AEP have not identified any circumstances that would support modifying the seven-year deadline for Oncor and AEP to commercially energize the transmission line. Oncor and AEP addressed this issue in the Joint Brief.⁸⁹ Staff joins the Joint Brief as to this issue.

VI. CONCLUSION

Based on the foregoing discussion, Staff supports the adoption of Route 41. Specifically, Route 41 is comparable to, or superior to, the other most commonly supported routes based on the evidence and quantitative criteria provided in the application.

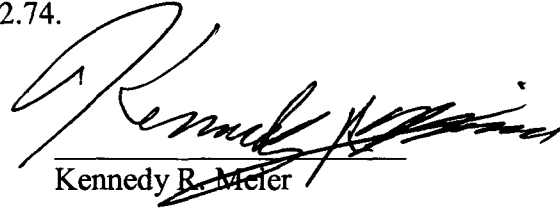
⁸⁸ Preliminary Order at 6.

⁸⁹ Joint Brief at 16.

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 5th of March, 2019, in accordance with 16 TAC § 22.74.



Kennedy R. Meier